



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Universal Design Systems, Inc.

File: B-237758.2

Date: April 24, 1990

Sara Kaul, for the protester.
Justin P. Patterson, Esq., Office of the Solicitor,
Department of the Interior, for the agency.
Scott H. Riback, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly failed to conduct a pre-proposal conference is dismissed as untimely where protester first raised allegation months after the time set for the submission of initial proposals.
2. Protest that agency improperly failed to engage in oral discussions is denied since agency is under no legal obligation to conduct oral, as opposed to written, discussions.
3. Protest that agency contracting personnel are biased in favor of another offeror is denied where protester fails to offer probative evidence in support of its allegation.

DECISION

Universal Design Systems, Inc. (UDSI) protests various actions of the United States Geological Survey (USGS), Department of the Interior, in connection with request for proposals (RFP) No. 7600, issued for procurement training courses. UDSI argues that the RFP improperly failed to provide for a pre-proposal conference, that the USGS improperly failed to afford it an opportunity to engage in oral discussions, that the agency's evaluators are biased in favor of another offeror under the RFP, and that this same offeror is not a small business for purposes of submitting an offer under the solicitation.

We dismiss the protest in part and deny it in part.

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The RFP was issued as a 100 percent small business set-aside and contemplates the award of an indefinite-quantity, fixed-price contract with a guaranteed minimum quantity of 2 courses and a maximum quantity of 12 courses per year during a base year and 2 option years. The RFP further provides that award will be made to the firm whose proposal offers the best value to the government.

In response to the solicitation, USGS received a number of initial offers, among which was the offer of UDSI as well as the offer of another firm, MSC Associates, Inc. After the initial evaluation of proposals, the USGS evaluators concluded that the offer of UDSI was so deficient that it could not be meaningfully scored pursuant to the RFP's evaluation scheme. On the basis of the evaluators' conclusion, the contracting officer eliminated UDSI's proposal from the competitive range and, by letter dated November 1, 1989, so informed the firm.

UDSI filed a protest in our Office on November 13, alleging that the agency had erred in eliminating it from the competitive range and alleging that the agency had improperly failed to provide it with various materials which it required in order to meaningfully prepare its offer. In response to the protest, USGS proposed to set aside the initial evaluation results, engage in discussions with UDSI and provide the firm with course manuals used in previous years for the performance of the RFP's requirements. On the basis of the agency's proposed corrective action, our Office dismissed UDSI's initial protest on December 7 as academic on the ground that the agency had met the protester's request for relief.

Subsequent to our dismissal of UDSI's first protest, the agency provided the firm with a written list of deficiencies identified in its initial proposal and requested that UDSI submit its proposal revisions on or before January 17, 1990. On January 17, UDSI apparently submitted its proposal revisions and simultaneously filed the current protest in our Office. The record shows that revised proposals have not been evaluated, that best and final offers have not been solicited, and that no source selection determination has been made.

UDSI first argues that the agency erred in failing to provide for a pre-proposal conference and distributing any minutes which may have resulted to any prospective offerors under the RFP. According to the protester, a pre-proposal conference would enable firms to compete on a more equal basis since it would provide offerors with a forum in which

to raise questions concerning any possible difficulties arising from the RFP.

This protest ground is untimely. UDSI was aware that USGS did not intend to conduct a pre-solicitation conference for this acquisition no later than the date for the submission of initial offers. It was therefore required to protest the agency's alleged failure in this respect at that time. Since UDSI did not raise this issue until months after the date set for the submission of initial proposals, we consider it untimely and therefore dismiss it. See 4 C.F.R. § 21.2(a)(2) (1989).

In any event, pre-proposal conferences are held at the discretion of the contracting officer in complex negotiated acquisitions to explain or clarify complicated specifications and requirements. See Senior Communications Servs., B-233173, Jan. 13, 1989, 89-1 CPD ¶ 37. Here, the contracting officer determined that the complexity of this acquisition did not merit a pre-proposal conference since the requirements are not unusual to any experienced vendor of procurement training courses. We have no basis to disagree. See Illinois Bell Tel. Co., B-202238, Oct. 20, 1981, 81-2 CPD ¶ 320.

The protester next argues that the agency improperly failed to conduct oral discussions with it. According to the protester, the agency gave it verbal assurances that it would conduct telephone conferences and face-to-face meetings with it when it sought to resolve UDSI's initial protest through its corrective action. UDSI alleges, however, that the agency has failed to "make good" on its earlier promises.

The agency responds that it never promised to engage in oral discussions with the protester and that, furthermore, its intentions in this respect were apparent from its letter to the protester in which it outlined its proposed corrective action and made no representation to the effect that it would engage in oral discussions. In addition, the agency argues that it is within its discretion whether or not to engage in oral discussions and there is nothing legally improper in its decision not to engage in oral discussions. The agency notes that it did engage in written discussions with the firm.

We agree with the agency. Federal Acquisition Regulation § 15.610(b) (FAC 84-16) requires that written or oral discussions be held with all responsible offerors whose proposals are within the competitive range. However, there is no requirement that an agency conduct face-to-face

discussions under a negotiated procurement. See Proprietary Software Sys., B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. We therefore deny this basis of UDSI's protest.

UDSI also alleges that the agency is biased in favor of another offeror under the solicitation. According to the protester, USGS is biased in favor of MSC Associates, Inc., intends to make award to that firm and has consistently maintained this intention since prior to the time when initial offers were to be submitted. In support of its allegation, UDSI has furnished our Office with a brochure prepared by MSC Associates which contains a list of previous contracts performed by that firm and which lists the contract negotiator of this RFP as the "government point of contact" for a previously performed USGS contract. According to UDSI, the government employee in question has been working within the USGS to secure award for MSC Associates under this solicitation. Also in support of this allegation, UDSI states that on numerous occasions a representative of MSC Associates has stated that the contract resulting from this solicitation was "mine" and "all sewn up."


The agency responds that the protester has offered no reliable evidence in support of this allegation and that, to the best of its knowledge, none of its officials is predisposed to make an award of this contract to MSC Associates. In addition, as to the government employee named in the brochure, USGS states simply that the individual in question was the contracting officer's representative under the prior contract and is only represented as such by MSC Associates in its brochure.

Our Office will not attribute prejudicial motives to contracting agency personnel on the basis of unsupported allegations, inference or supposition. See e.g. Allied Mgmt. of Texas, Inc., B-232736.2, May 22, 1989, 89-1 CPD ¶ 485. In the present case, we do not view the materials or statements presented by UDSI as in any way probative of bias on the part of USGS personnel in favor of MSC Associates. Indeed, UDSI admits that its "fears" of bias are based on "rumors that were floating around the contracting community" about this RFP. Under these circumstances, we see no basis upon which to sustain UDSI's protest on this ground.

Finally, UDSI alleges that MSC Associates is not a small business entitled to submit an offer under the RFP. We dismiss this allegation since size status protests are for review exclusively by the Small Business Administration and,

consequently, our Office does not have jurisdiction to consider such matters. See 4 C.F.R. § 21.3(m)(2).

The protest is dismissed in part and denied in part.

for 
James F. Hinchman
General Counsel